

**Town of Amherst**  
**Zoning Board of Appeals - Special Permit**

*DECISION*

**Applicant:** John Nelson

**Date application filed with the Town Clerk:** May 14, 2008

**Nature of request:** A Special Permit to construct a six-foot fence within the front setback, under Sections 6.22 and 6.29 of the Zoning Bylaw

**Address:** 183 East Pleasant Street (Map 11B, Parcel 42, R-G Zoning District)

**Legal notice:** Published May 28 and June 4, 2008 in the Daily Hampshire Gazette and sent to abutters on May 27, 2008

**Board members:** Thomas Simpson, Albert Woodhull and Eric Beal

**Submissions:** The petitioner submitted a site plan showing the location of the proposed fence, a Management Plan, and photos of the existing hedge and proposed stockade fence

**Site Visit:** June 11, 2008

The Board met with Mr. Nelson at his home and observed the following:

- The location of the house, near the center of Town and on one of the busiest roads in Amherst;
- The hemlock hedge along the front property line that has no lower branches;
- An example of the proposed stockade fence and its color;
- The location of the proposed fence behind the hemlock hedge and along the southern border;
- The number of trees surrounding the property, creating a shady front yard;
- The historic house, moved from Kendrick Park in 1980.

**Public Hearing:** June 12, 2008

Mr. Nelson spoke to the application at the hearing. He gave the following information:

- He would like to install a simple six-foot stockade fence across the front of his property and along the southern boundary;
- The fence would begin about five (5) feet from the front property line and just south of the driveway, travel south across the front for 57 feet, then turn and go east 24 feet about 2 feet in from the southern boundary;
- The reason the applicant wants a fence is that the Canadian hemlock hedge along the front property line is 25 years old and has lost most of its lower branches due to a blight;
- The hedge has been treated and is now stable, but the lower half of the hedge remains bare;
- The fence would be placed a few feet inside the base of the hedge and would be stained the color of the hemlock trunks; visually it would replace the hedge branches;
- The traffic on East Pleasant Street has increased exponentially since 1980 when he and his family moved there;
- The cars are now a constant visual presence and the noise is much increased; the road noise and the

headlights are the main problems;

- The fence would give the applicants privacy as well;
- The fence would have 4" x 4" posts, and each section would be 8 feet wide;
- He has planted small maples in front of the hedge, which gives some relief, but only 6 months of the year;
- Nothing else will grow in conjunction with the acid, shady hemlocks;
- A four (4) foot high fence would not hide the traffic and headlights.

Mr. Simpson asked why the fence couldn't be placed outside of the required 15-foot setback. Mr. Nelson responded that the Town Engineer and architect Steve Ervin sited the house in 1980 fairly close to the road. If the fence were placed 15 or more feet in from the front property line, there would be no front yard. Also, there would be a large empty space between the hedge and the fence. He would lose about 1/3 of the front yard.

Mr. Nelson emphasized that the fence is meant to replace the hedge. The fence plus the hedge will not change the impact to the neighborhood than just the hedge alone. The hedge is very near the front property line; the fence would be about 1-2 feet back from the hedge trunks.

Mr. Woodhull stated that he agrees with the applicant. Not separating the hedge and fence would have less impact overall and he does not want them to be separated.

Mr. Waskiewicz, Building Inspector, asked if the fence might impede a driver's visibility. The applicant responded that the fence would be inside the hedge, there are several feet of Town right-of-way between the hedge and the paved road, and the road is perfectly straight for several hundred yards there. Visibility for traffic along East Pleasant Street, as well as vehicles leaving his property would not be impaired.

Mr. Beal made a motion to close the public hearing. Mr. Woodhull seconded the motion, and the vote was unanimous to close the hearing.

#### **Public Meeting:**

Mr. Simpson stated that Section 6.24 of the Zoning Bylaw requires that a fence shall not exceed four (4) feet in height within the front setback; there are just three situations when this requirement can be waived – for reasons of safety, aesthetics or site design (Section 6.29). He does not see where any of these reasons apply, and has not heard a compelling reason for waiving these requirements.

Mr. Woodhull stated that the hedge is a fence, but ineffective. It is not working alone, and it's reasonable to have the fence where the applicant wants it for reasons of aesthetics.

Mr. Beal said that he is leaning towards granting the application. A four-foot high fence is allowed by right, and there is not much difference between a four and six foot fence in this location.

Mr. Woodhull stated that the property slopes down about 5-6 feet from the hemlocks to the house. If the fence were set back 15 feet from the property line, about 10 feet from where it's proposed, its usefulness and efficacy would disappear. The hemlock hedge has been the applicant's "fence" and he wants to make it work again.

Mr. Simpson asked if something else could be planted along the hedge. Mr. Woodhull said that he has a similar hedge along his side property line. The only plants he's found that can co-exist with hemlocks are

maple seedlings. The shade, root system and acid soil discourage other types of plants. A fence would have less maintenance than plants too.

Mr. Nelson said that they will be planting flowers inside the fence. The yard is very shady, and the unusual nature of the hedge precludes any other solution.

Mr. Beal stated that the heavy traffic along East Pleasant Street is a compelling reason to grant the permit. A 6 foot fence 15 feet back would not provide the protection the applicants want. There is little difference between a 4 and a 6-foot fence, he said.

After some discussion, the Board agreed that specific conditions of the permit could resolve the differences in opinions. The Board spent the remainder of the public meeting discussing the conditions of a Special Permit if it were to be granted.

**Findings:**

The Board finds under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

10.380 and 10.381 – The proposal is suitably located in the neighborhood and is compatible with existing uses because there are other hedges and or fences used along East Pleasant Street to protect against the noise and visual intrusiveness of the traffic.

10.382 and 10.385 – The proposal would not constitute a nuisance and reasonably protects the adjoining premises against detrimental or offensive uses on the site because the fence and hedge will be located in the same place and not change the impact, if any, on the adjoining premises.

10.383 and 10.387 – The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians and the proposal provides convenient and safe vehicular and pedestrian movement within the site and in relation to adjacent streets because the fence would be located behind the hedge and would not change visibility for vehicles along East Pleasant Street or those exiting the premises.

10.384 – Adequate and appropriate facilities would be provided for the proper operation of the proposed use because the conditions of the permit require adequate maintenance of the fence.

10.391 – The proposal protects unique or important natural, historic or scenic features because it will be close to the existing hedge and will not impact the front yard or the rest of the property.

10.392 – The proposal provides adequate landscaping, including the screening of adjacent residential uses, because the petitioner will be adding plantings in the front yard. Also, the added fencing on the side yard will help to screen the adjacent residence.

10.395 – The proposal does not create disharmony with respect to the use, scale and architecture of existing buildings in the vicinity because there are other hedges and fences in the area and along East Pleasant Street.

10.397 – The proposal provides adequate recreational facilities, open space and amenities for the proposed use because the fence will be located close to the hedge, leaving the front yard open.

10.398 – The proposal is in harmony with the general purpose and intent of the Zoning Bylaw because it protects the health, safety, convenience and general welfare of the inhabitants of the Town of Amherst.

**Public Meeting – Zoning Board Decision**

Mr. Woodhull made a motion to APPROVE the application for a six-foot stockade fence located within the front setback, with conditions. Mr. Beal seconded the motion.

For all of the reasons stated above, the Board VOTED unanimously to approve a Special Permit for a six-foot stockade fence to be located within the front setback under Section 6.29 of the Zoning Bylaw on the premises at 183 East Pleasant Street, (Map 11B, Parcel 42, R-G Zoning District, as requested in the application filed by John R. Nelson, with conditions.

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THOMAS SIMPSON                      ALBERT WOODHULL                      ERIC BEAL  
FILED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2008 at \_\_\_\_\_,  
in the office of the Amherst Town Clerk \_\_\_\_\_.

TWENTY-DAY APPEAL period expires, \_\_\_\_\_ 2008.  
NOTICE OF DECISION mailed this \_\_\_\_\_ day of \_\_\_\_\_, 2008  
to the attached list of addresses by \_\_\_\_\_, for the Board.

NOTICE OF PERMIT or Variance filed this \_\_\_\_\_ day of \_\_\_\_\_, 2008,  
in the Hampshire County Registry of Deeds.

**Town of Amherst**  
**Zoning Board of Appeals**

*SPECIAL PERMIT*

The Amherst Zoning Board of Appeals hereby grants a Special Permit for a six-foot stockade fence to be located within the front setback under Section 6.29 of the Zoning Bylaw on the premises at 183 East Pleasant Street, (Map 11B, Parcel 42, R-G Zoning District, as requested in the application filed by John R. Nelson, subject to the following conditions:

1. The fence shall be set back at least six (6) feet from the front property line.
2. The sideyard setback for the fence is hereby waived under the provisions of Section 6.29 of the Zoning Bylaw.
3. The fence shall be painted or stained a dark color to blend with the hemlock hedge.
4. A hedge along the front of the property shall be maintained as long as the fence is in place.
5. This permit expires if more than 1/3 of the hemlock hedge along the fence dies or is removed and not replaced.

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THOMAS SIMPSON, Chair  
Amherst Zoning Board of Appeals

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DATE